

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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MA 4410 of 2016 and OA 457 of 2016

Om Prakash Basora	Applicant
Vs		
Union of India and others	Respondents

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For the Applicant	:	Mr Surinder Sheoran, Advocate
For the Respondents	:	Mr Vikas Sharma, Sr PC

CORAM:

**HON'BLE MR JUSTICE VIRENDER SINGH, CHAIRPERSON
HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)**

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ORDER
08.11.2017

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MA 4410 of 2016:

Written Statement is taken on record.
The MA is disposed of .

OA 457 of 2016:

The claim made by the applicant in this O.A. is for grant of disability element of disability pension for the period from 17.09.1997 to 14.09.2002 and the benefit of rounding off w.e.f. 01.01.1996 @ 50%, as against 20% disability inter alia grant of any other appropriate order or direction deemed fit and proper in the facts and circumstances of the case.

The pleaded case, in brief, is that the applicant was enrolled in the Army on 10.12.1965 and discharged on 31.12.1980 on completion of normal tenure of service in Low Medical Category on the recommendations of a duly constituted Release Medical Board(RMB) with 20% disability which was declared as attributable to Army service. Accordingly, the applicant got disability pension up to 16.09.1997. An RSMB in his case was held on 15.09.1997 which assessed the disability as 20% for five years as per its proceedings at Annexure A-1. However, the PCDA(P), Allahabad, reduced the same to less than 20% and discontinued the disability element of disability pension to the applicant as per the impugned letter Annexure A-2, dated 28.01.1998. Appeal against the said rejection order was rejected by the Appellate Authority vide Annexure A-3, dated 20.09.1999. Another RSMB, held on 02.07.2002, assessed

disability of the applicant as 20% for life as per Annexure A-4 and the applicant has been granted disability element of disability pension @ 20% w.e.f. 15.09.2002 for life but claim of the applicant for its rounding-off to 50% has been rejected by Respondent No.4 vide impugned letter, dated 11.01.2012 (Annexure A-6). Hence the present O.A.

The grant of disability pension to the applicant @ 20% from 01.01.1981 to 16.09.1997 is admitted by the respondents in the written statement. With regard to the claim of disability element from 17.09.1997 to 14.09.2002, the respondents have submitted as under:-

“The reassessment claim to disability pension in respect of the above named pensioner has been adjudicated in consultation with Medical Adviser (Pension) attached to this Office and it has been decided that his I.D. viz “Planter Fasitis” has been reviewed and reassessed at less than 20% (i.e. 11-14%) for five years from 17th Sep 1997 to 14 Sep 2002. No disability element of pension which has already been granted vide this office PPO No.S/C/13859/81 will continued t be paid”.

Further, regarding the claim of the applicant for grant of the benefit of rounding-off, the stand of the respondents is that under the provisions contained in Para 7.2 of the Government of India, Ministry of Defence letter dated 31.01.2001, the rounding off benefit of disability pension is applicable to those personnel who have been invalided out from military service n medical grounds on or after 01.01.1996 and also as per PCDA(P), Allahabad Circular No.529, dated 14.10.2014, read in conjunction with GoI, MoD letter dated 15.09.2014, individuals invalided out from service prior to 01.01.1996 are entitled for rounding off benefit of disability pension w.e.f. 01.01.1996 provided they are in receipt of disability pension on 01.01.1996.

On the basis of the above submissions, it is prayed that the O.A. may be dismissed with costs.

We have heard the learned counsel for the parties and have perused the record.

On consideration of the rival submissions of the parties, we are of the considered view that the claim of the applicant for grant of disability element of disability pension for the period 17.09.1997 to 14.09.2002 has been denied to the applicant illegally and arbitrarily due to undue influence on the part of the Pension Sanctioning Authority i.e. PCDA(P), Allahabad. Such interference is against the judgment of the Hon'ble Supreme Court in **Civil Appeal No.164 of 1993 (arising out of SLP No.4233 of 1992)**, titled **Ex Sapper Mohinder Singh vs. Union of India & another**, decided on **15.01.1993** in which it has been observed as under:-

“... From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz., whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Corps.”

Subsequent to that, the Integrated HQ of MoD(Army) issued letter dated 25.04.2011 stating as under:-

“These alterations in the findings of IMB/RMB by MAP (PCDA) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, the Hon’ble Supreme Court has ruled that the medical board which has physically examined should be given due weightage, value and credence.”

The above law is being consistently followed by this Tribunal and a catena of decisions have been given on this basis, including the following, to mention a few:-

- (i) **OA No.1105 of 2013, titled Jai Narain vs. Union of India and others, decided on 30.09.2014;**
- (ii) **OA No.3735 of 2013, titled Giani Ram vs. Union of India & others, decided on 16.01.2014; and,**
- (iii) **OA No.433 of 2015, titled Smt. Tarawati Devi vs. Union of India & others, decided on 25.04.2017.**

In view of the above, we feel convinced that the claim of the applicant for disability element of disability pension for the disputed period, i.e. from 17.09.1997 to 14.09.2002 is squarely covered as per this law and deserves to be granted to the applicant. We are further of the considered opinion that repudiation of the claim of the applicant for grant of the benefit of rounding-off of disability element of disability pension to 50%, as against 20% disability, is also in contravention to the judgment of the Hon’ble Supreme Court in **Civil Appeal No.418 of 2012, titled Union of India & others vs. Ram Avtar**, decided on **10.12.2014**, and a plethora of cases decided by this Tribunal, based thereupon.

Resultantly, this O.A. succeeds. The impugned orders are hereby quashed and set aside and a direction is issued to the respondents to release disability element of disability pension to the applicant even for the gap period i.e. w.e.f. 17.09.1997 to 14.09.2002 with a further direction to round-off the disability element of disability pension from 20% to 50% from 01.01.1996 onwards for life. The respondents are also directed to calculate the arrears found admissible to the applicant on this count and release the same to the applicant within a period of three months from the date of receipt of certified copy of this order by the counsel for respondents, failing which, the amount shall carry interest @ 8% per annum from the due date, to be considered as 01.01.1996 in this case.

No costs.

(Sanjiv Chachra)
Member (A)
08.11.2017
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(Virender Singh)
Chairperson